IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

WALTER J. TILLMON, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. A. No. 99-258-SLR
	)	
STANLEY TAYLOR, Commissioner; et al.,	)	
	)	
Defendants.	)	
	)	

Walter J. Tillmon, Jr., Delaware Correctional Center, Smyrna, Delaware. Pro se.

Robert F. Phillips, Esquire of the Delaware Department of Justice, Wilmington, Delaware. Counsel for defendants Robert Snyder, Ronald Hosterman, Fran Ahoorai, Leo Boyle, and Howard Young.

John D. Balaguer, Esquire and Linda M. Carmichael, Esquire of White and Williams LLP, Wilmington, Delaware. Counsel for defendants Richard Colvert and Dr. Douglas Miller.

MEMORANDUM OPINION

Dated: February 1, 2001
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Currently before the court are several motions filed in this § 1983 action. Robert Snyder, Ronald Hosterman, Fran Ahoorai, Leo Boyle and Howard Young (collectively, "the State defendants") have filed a motion for summary judgment (D.I. 121, 125), a motion to dismiss for failure to exhaust administrative remedies (D.I. 118), and a motion for a protective order to stay discovery. (D.I. 120) Plaintiff Walter J. Tillmon has filed a motion for reconsideration (D.I. 95), a motion for default judgment as to defendants Richard Colvert and Dr. Douglas Miller (collectively, "the Medical defendants") (D.I. 96), a motion to compel discovery (D.I. 127), and motions for appointment of counsel and medical and legal experts, and other immediate intervention and emergency relief. (D.I. 108, 129, 131, 132)

The court has jurisdiction over plaintiff's suit by virtue of 28 U.S.C. § 1331. For the following reasons, the court shall grant the State defendants' motion for summary judgment, and dismiss as moot the State Defendants' motion for a protective order, plaintiff's motion to compel discovery, and plaintiff's emergency request of immediate intervention and order to show cause as to the State defendants. The court shall also deny the State defendants' motion to dismiss, and deny plaintiff's motions for reconsideration, default judgment and appointment of counsel.

II. BACKGROUND

The court takes the following facts from plaintiff's complaint and from the various documents filed by plaintiff. At the outset, the court must note that plaintiff's complaint is not a model of clarity. It is particularly difficult to determine exactly which defendants are responsible for the constitutional violations alleged by plaintiff. Nonetheless, the court shall endeavor to present plaintiff's arguments in as clear a fashion as possible.

Plaintiff is an inmate at the Delaware Correctional Center ("DCC") in Smyrna, Delaware and is serving a seven year sentence for five counts of second degree forgery. (D.I. 2, App., Sentence Status Rep.)[1] On April 22, 1999, plaintiff filed a pro se § 1983 complaint against the above-captioned defendants.[2] The gravamen of his complaint is that defendants conspired to deprive him of his Eighth Amendment right to adequate medical care during incarceration. (D.I. 2 at 3)

According to the complaint, plaintiff is a veteran of the Vietnam War. Plaintiff claims that he has been receiving treatments and therapies at the Veterans Administration ("VA")

---

[1]All references to "App." refer to the unnumbered documents appended to plaintiff's complaint at D.I. 2.

[2]Although the case caption is not changed, the court previously granted summary judgment in favor of defendant Stanley Taylor and dismissed several other defendants due to lack of personal jurisdiction. (D.I. 93)

Hospital in Elsmere, Delaware for neurological, hypertensive, and orthopedic disorders related to his combat in Vietnam. Plaintiff contends that the DCC transported him to the VA Hospital to receive treatments once or twice each month during plaintiff's incarceration. (D.I. 2 at 4) According to plaintiff, "major problems" arose with his treatment at the VA Hospital when the contract between DCC and Correctional Medical Services, Inc. (a private prison health care provider) expired. The DCC allegedly contracted with a new health care provider, Prison Health Services, Inc. ("PHS"), and this new arrangement temporarily interrupted plaintiff's treatment at the VA Hospital. (D.I. 2 at 5) After plaintiff complained, his treatments eventually resumed; however, plaintiff contends that from time to time medical orders from VA Hospital doctors to PHS doctors and DCC officials were lost (either negligently or intentionally) and that this contributed to his pain and suffering.[3] (D.I. 2 at 5) His allegedly inadequate treatment continued until November 1997 when plaintiff sought legal relief in the Delaware Superior Court.[4] (D.I. 2 at 6)

[3]As one example, plaintiff cites a May 23, 1997 medical order from Dr. Miller of the VA Hospital to the DCC noting plaintiff's neck injuries and requesting that plaintiff be given a lower bunk. (D.I. 2, App.) Plaintiff contends that he was not given a lower bunk and that he injured his back and neck after falling from the upper bunk in his cell. (D.I. 2 at 5)

[4]The disposition of this Superior Court litigation is unknown.

Allegedly in retaliation for the Superior Court lawsuit, the defendants transferred plaintiff to the Greensville Correctional Center ("Greensville") in Jarratt, Virginia. (D.I. 2 at 6) Plaintiff appended to his complaint a May 30, 1998 letter from Stanley Taylor, Commissioner of the Delaware Department of Correction, explaining that plaintiff was one of 150 inmates being transferred temporarily to Greensville to alleviate overcrowding in the Delaware prison system. (D.I. 2, App., letter fr. Taylor to plaintiff, 5/30/98) Plaintiff contends that this transfer constituted deliberate indifference to his serious medical needs, presumably because the transfer separated him from his doctors and his therapeutic treatment at the VA Hospital in Elsmere, Delaware. Plaintiff also contends that defendants[5] falsified and/or destroyed his medical records at the DCC in order to facilitate his transfer to Greensville. (D.I. 2 at 6) Plaintiff and the State defendants agree that prisoners with chronic medical conditions were ineligible for transfer to Greensville. (D.I. 58, Ex. B (Ahoorai Aff.))

Plaintiff was returned to the DCC in November of 1999. Since then, plaintiff has filed numerous motions seeking to amend his complaint and to add new defendants. Plaintiff also filed several motions seeking injunctive relief. The court denied

[5]Plaintiff does not name the individuals responsible for altering his DCC medical records. Presumably, they are listed in the caption as defendants.

these motions in a February 28, 2000 order. (D.I. 61) In a June 21, 2000 order, the court dismissed certain defendants, denied plaintiff's motions to strike and stay consideration of defendants' motions, and reserved decision on the State defendants' motion for summary judgment pending additional discovery. (D.I. 93)

III. THE STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

On February 2, 2000, the State defendants filed a Rule 12(b)(6) motion to dismiss plaintiff's complaint for failure to state a claim. (D.I. 57) Because the State defendants appended two affidavits to their motion, the court ruled that it would construe the motion as one for summary judgment. See Fed. R. Civ. P. 12(b). The court reserved decision on the motion in a June 21, 2000 order pending plaintiff's release of his medical records to the State defendants. (D.I. 93) The court ordered the State defendants to provide plaintiff with a release form, and stated that "[i]f plaintiff fails to sign said release form, the court shall grant summary judgment in favor of the remaining [State] defendants." (Id.) The State defendants sent plaintiff a medical records release form upon direction of the court, but plaintiff returned his own release form, which narrowed the records released to only those "specific" and "pertaining" to this action after 1994. (D.I. 103) The State defendants have

renewed their motion for summary judgment pursuant to the court's order. (D.I. 121, 125)

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Federal Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pennsylvania Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a

motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

To succeed in an action claiming inadequate medical treatment, a prisoner must show more than negligence. He must show "deliberate indifference" to a serious medical need. See Estelle v. Gamble, 429 U.S. 97, 104 (1976). The seriousness of a medical need may be demonstrated by showing that the need is "'one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person would easily recognize the necessity for a doctor's attention.'" Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3d Cir. 1987) (quoting Pace v. Fauver, 479 F. Supp. 456, 458 (D.N.J. 1979)). A prison official's conduct does not constitute deliberate indifference unless it is accompanied by the requisite mental state. See Farmer v. Brennan, 511 U.S. 825, 837 (1994). Specifically, "the official [must] know . . . of and disregard . . . an excessive risk to inmate health and safety; the official must be both aware of facts from which the inference can be drawn that a substantial risk of serious harm exists, and

he must also draw the inference." Farmer, 511 U.S. at 837. While a plaintiff must allege that the official was subjectively aware of the requisite risk, he may demonstrate that the prison official had knowledge of the risk through circumstantial evidence and "a fact finder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious." Id. at 842.

Plaintiff contends that State defendants Snyder (the warden of DCC), Hosterman (the treatment administrator at DCC), Ahoorai (the Delaware Department of Correction's Interstate Compact Coordinator), Boyle (a DCC Inmate Classification Officer), and Young (Director of Special Programs for the Department of Correction) acted indifferently to his medical needs. Plaintiff argues that Snyder was aware of his "chronic" condition because Snyder authorized plaintiff's transportation between the VA Hospital and the DCC. He concludes that Snyder acted indifferently to his medical needs by transferring plaintiff to Greensville and away from the VA Hospital. As for the remaining defendants, plaintiff appears to argue that they knew of his serious medical condition either because they reviewed his medical records in the process of excluding those inmates ineligible for transportation to Greensville or because they authorized his transportation to the VA Hospital. Plaintiff also alleges that some or all of the defendants conspired to destroy

or alter his DCC medical records to facilitate plaintiff's transfer to Greenville.

To determine the extent of the State defendants' knowledge of plaintiff's medical needs, the court ordered plaintiff to sign a medical records release form provided to him by the State defendants which permitted release of all of his VA Hospital records. Plaintiff did not sign the release form; instead, he returned his own form, which narrowed the records released to only those "specific" and "pertaining" to this action after 1994. Plaintiff's release of select records is insufficient to satisfy the court's order or create genuine issues of material fact in this case, especially since plaintiff's injuries allegedly stem from a 1970 war injury. Consequently, the court shall grant the State defendants' motion for summary judgment.[6]

IV. PLAINTIFF'S MOTIONS

Plaintiff's motion for reconsideration of the court's June 21, 2000 order (D.I. 95) appears to dispute the court's characterization of plaintiff's allegations rather than arguing for reconsideration of the court's prior decision. In fact,

[6]The State defendants' motion for a protective order staying discovery until denial of the motion for summary judgment (D.I. 120) is dismissed as moot, as is plaintiff's motion to compel discovery requests of State defendants. (D.I. 127) Plaintiff's emergency request of immediate intervention and order to show cause (D.I. 132) are also dismissed as to the State defendants. The State defendants' motion to dismiss for failure to exhaust administrative remedies (D.I. 118) is denied, as the record reflects that plaintiff did engage in an internal grievance process. (D.I. 2)

plaintiff seems to disagree with the basis of the court's decision to deny the State defendants' motion for summary judgment, a ruling in plaintiff's favor. Thus, plaintiff's motion for reconsideration is denied. See Brambles USA, Inc. v. Blocker, 735 F. Supp. 1239, 1240 (D. Del. 1991) (holding that in no event should court grant reargument where it would not alter result reached previously by court).

Plaintiff's motion for appointment of counsel (D.I. 108) is also denied. The appointment of counsel for an indigent plaintiff in a civil case under 28 U.S.C. § 1915(d) is a matter of discretion for the court and is usually only granted upon a showing of special circumstances indicating the likelihood of substantial prejudice to him resulting, for example, from his probable inability without such assistance to present the facts and legal issues to the court in a complex but meritorious case. See Tabron v. Grace, 6 F.3d 147, 154 (3d Cir. 1993) (citing Smith Bey v. Petsock, 741 F.2d 22, 26 (3d Cir. 1984)). Plaintiff has shown no "special circumstances" requiring an appointment of counsel, and his filings in this case (including motions, responses, memoranda of law, affidavits and interrogatories) evidence plaintiff's ability to adequately represent himself. Thus, the court shall deny plaintiff's motion for appointment of counsel.

Finally, plaintiff's motion for default judgment as to the Medical defendants (D.I. 96) is denied. Both Mr. Colvert and Dr.

Miller filed waivers of service and an answer to plaintiff's complaint in compliance with the Federal Rules of Civil Procedure, therefore, there is no basis for plaintiff's request.

V. CONCLUSION

For the aforementioned reasons, the court shall grant the State defendants' renewed motion for summary judgment (D.I. 121, 125). The court shall dismiss as moot the State defendants' motion for a protective order (D.I. 120), plaintiff's motion to compel discovery (D.I. 127), and plaintiff's emergency request of immediate intervention and order to show cause (D.I. 132) as to the State defendants. The State defendants' motion to dismiss (D.I. 118), plaintiff's motion for reconsideration (D.I. 95), plaintiff's motion for appointment of counsel (D.I. 108), and plaintiff's motion for default judgment as to the Medical defendants (D.I. 96) are denied. An appropriate order shall issue.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

WALTER J. TILLMON, JR.,	)	
Plaintiff,	)	
v.	)	Civ. A. No. 99-258-SLR
STANLEY TAYLOR, Commissioner; et al.,	)	
Defendants.	)	

O R D E R

At Wilmington, this 1st day of February, 2001, for the reasons stated in the memorandum opinion issued this same day,

IT IS ORDERED that:

1. The State defendants' renewed motion for summary judgment (D.I. 121, 125) is granted.

2. The State defendants' motion for a protective order (D.I. 120) and plaintiff's motion to compel discovery (D.I. 127) are dismissed as moot, as is plaintiff's emergency request of immediate intervention and order to show cause (D.I. 132) as relates to State defendants.

3. State defendants' motion to dismiss (D.I. 118), plaintiff's motion for reconsideration (D.I. 95), plaintiff's motion for appointment of counsel (D.I. 108), and plaintiff's motion for default judgment (D.I. 96) are denied.

4. Briefing on plaintiff's motion for appointment of legal and medical experts (D.I. 131) and plaintiff's motion for

emergency request of immediate intervention and order to show cause (D.I. 132) as relates to the Medical defendants shall proceed in accordance with the following schedule:

a.) The Medical defendants shall file and serve an answering brief in response to plaintiff's motions on or before February 15, 2001.

b.) Plaintiff shall file and serve a reply brief in response to the Medical defendants' answering brief on or before March 1, 2001.

_____
United States District Judge